



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

JAN 23 1997

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Virgil Kreder, President
Red Arrow Products Company
633 South 20th Street
Manitowoc, Wisconsin 54220

Re: In the Matter of Red Arrow Products Company
Manitowoc, Wisconsin
Docket No. 5-CAA- '97-002

Dear Mr. Kreder:

Enclosed herein is a Complaint and Notice of Opportunity for Hearing filed against Red Arrow Products Company (Red Arrow Products) pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d). The Complaint alleges that Red Arrow Products has violated the Wisconsin State Implementation Plan (SIP) as set forth in NR 154.11(6)(a)1., at its facility located at 1226 South Water Street, by emitting visible emissions of particulate matter in excess of the limit allowed under the SIP.

We call your attention to that part of the Complaint entitled "Opportunity to Request a Hearing." Red Arrow Products is required to respond to this Complaint within thirty (30) days of receipt, or the proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

For additional information or clarification of issues regarding this matter, you may contact Andre Daugavietis, Associate Regional Counsel, (C-30A), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6663, with legal issues, or Jennifer Darrow, Environmental Scientist (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6315, with technical issues or to arrange a conference to discuss this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David Kee".

David Kee, Director
Air and Radiation Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

RED ARROW PRODUCTS COMPANY)
Manitowoc, Wisconsin)

Respondent.)
_____)

RECEIVED
REGIONAL HEARING
Docket No. 5-CAA- '97-002

Proceeding to Assess
Administrative Penalty
under Section 113(d) of the
Clean Air Act
42 U.S.C. § 7413(d)

JAN 24 3:31 PM '97
REGIONAL HEARING
REGION V

ADMINISTRATIVE COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING
ON PROPOSED ORDER ASSESSING CIVIL PENALTY

This administrative action is instituted pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), against Respondent, Red Arrow Products Company (Red Arrow Products), for administrative penalties.

The Complainant is, by lawful delegation, the Director of the Air and Radiation Division of the United States Environmental Protection Agency (USEPA), Region 5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of the USEPA to issue an administrative penalty order assessing a civil administrative penalty against any person whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of an applicable implementation plan.

STATUTORY AND REGULATORY BACKGROUND

1. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit to U.S. EPA, for approval, a State Implementation Plan (SIP) for, among other things, the implementation, maintenance and enforcement of the National Ambient Air Quality Standards (NAAQS) within each State.

2. On March 9, 1983, U.S. EPA approved Wisconsin Regulation NR 154.11 which there upon became part of the federally enforceable Wisconsin SIP. 48 Fed. Reg. 9860.

3. Wisconsin Regulation NR 154.11(6) states that no person shall suffer, cause, allow or permit emissions into the ambient air from any direct or portable source in excess of one of the limitations set forth in Wisconsin Rule NR 154.11(6)(a)-(f).

4. Wisconsin Regulation NR 154.11(6)(a) requires all direct and portable sources on which construction or modification is commenced after April 1, 1972, to meet the emission limits set forth in the rule.

GENERAL ALLEGATIONS

5. The statutory and regulatory background statements contained in Paragraph 1 through 4 are incorporated herein by reference.

6. The Respondent in this proceeding is Red Arrow Products Company.

7. Respondent is a Wisconsin corporation with a place of business located at 1226 South Water Street, Manitowoc, Wisconsin.

8. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e) and Wisconsin Rule NR 154.01(143).

9. Respondent is the "owner and/or operator", as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5) and an "operator", as defined at Wisconsin Rule NR 154.01(127), of a sawdust dryer, designated as P01, at its facility located at 1226 South Water Street, Manitowoc, Wisconsin.

10. The Respondent's sawdust dryer (P01) is a direct source of emission to the ambient air.

11. The sawdust dryer (P01) was constructed after April 1, 1972, and is therefore subject to Wisconsin Rule NR 154.11(6)(a).

12. On July 24, 1996, U.S. EPA sent a Notice of Violation to the Respondent for violations of Wisconsin Rule NR 154.11(6).

13. The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

COUNT I

14. Paragraphs 1 through 13 of this Complaint are incorporated herein by reference.

15. Wisconsin Regulation NR 154.11(6)(a)1. states that the limit for all direct or portable sources, on which construction or modification is commenced after April 1, 1972, is emissions of shade of density equal to or no greater than number 1 on the Ringelmann chart or 20 percent opacity.

16. On July 13, 1995, July 23, 1995, and July 24, 1996, Wisconsin Department of Natural Resources (WDNR) performed visible emissions readings at the Respondent's facility.

17. Visible emissions readings taken during the inspection showed opacity readings greater than number 1 on the Ringelmann chart or 20 percent opacity as set forth in Wisconsin Regulation 154.11(6)(a)1. As tabularized below:

SUMMARY OF READINGS		
SAWDUST DRYER		
DATE	TIME	READING
July 13, 1995	09:51-09:57	43.3%
	09:57-10:03	59.2%
	10:03-10:09	55.9%
	10:09-10:15	59.2%
July 23, 1995	09:42-09:47	35.2%
	09:47-09:53	38.1%
	09:53-09:59	37.3%
	09:59-10:05	37.5%
July 24, 1996	08:27-08:33	57.9%
	08:34-08:40	59.4%
	08:40-08:46	47.7%

18. As shown in the foregoing table, Respondent exceeded the 20 percent opacity limitation in violation of NR 154.11(6)(a)1. of the Wisconsin SIP on the dates and times set forth therein.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

19. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator of the USEPA may assess a civil penalty of up to \$25,000 per day for each violation, up to a total of \$200,000, for, among other things, violations of any requirement or prohibitions of any applicable implementation plan. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), authorizes the assessment of a civil penalty based upon the seriousness and duration of the violation alleged, and after consideration of the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, payment by Respondent of penalties previously assessed for the same alleged violations, the economic benefit of noncompliance, and other factors as justice may require.

20. After considering the factors set forth in the preceding paragraph, U.S. EPA proposes that Respondent be assessed a civil penalty of \$80,700.

21. This proposed penalty has been calculated in accordance with the "Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991) (Penalty Policy). A copy of the Penalty Policy accompanies this Complaint.

22. Under the Penalty Policy, U.S. EPA considers the economic benefit a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from noncompliance with the Act, both for deterrence purposes and because other regulated entities have incurred expenses in complying with the Act. Accordingly, this proposed penalty includes recovery of the economic benefit Respondent received through operating the sawdust dryer in violation of the Wisconsin SIP.

23. In assessing this penalty amount, U.S. EPA considered actual or possible harm resulting from the alleged violation. The highest six minute average opacity corresponds to a value of 195 percent above the standard. Accordingly, the proposed penalty includes a component corresponding to the potential harm from operating the sawdust dryer at an opacity of 195 percent above the standard.

24. In assessing this penalty amount, U.S. EPA considered the sensitivity to the environment resulting from the alleged violation. Red Arrow Products Company is located in an attainment area for particulate. The penalty includes a component corresponding to operating in an attainment area.

25. In assessing this penalty amount, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Red Arrow Products Company was assumed to have total tangible net worth of between \$100,000 and \$1,000,000.

26. In assessing this penalty amount, U.S. EPA considered the degree of co-operation exhibited by Respondent, as evidenced by its good faith efforts in hiring a consultant and promptly installing a control device that the source was advised would control the particulate emissions at issue.

27. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number of the case. Respondent simultaneously shall send copies of the check and transmittal letter to:

Jodi Swanson-Wilson, Regional Hearing Clerk (R-19J)
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Jennifer Darrow (AE-17J)
Environmental Scientist
Air and Radiation Division
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Andre Daugavietis (CA-30A)
Associate Regional Counsel
Office of Regional Counsel
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

28. Section 113(d) of the Act, 42 U.S.C. § 7413(d)(2), requires the Administrator of the USEPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing

on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in the Answer, as discussed below.

29. The hearing requested regarding the Complaint will be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 FR 4316 (February 4, 1992), a copy of which accompanies this Complaint.

ANSWER

30. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk (R-19J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, within 30 calendar days of receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

31. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which it cannot admit, deny, or explain, in which case the allegation will be deemed denied. Your Answer also specifically shall state:

1. The circumstances or arguments which you allege constitute grounds for defense; and
2. The facts that you intend to place at issue; and

3. Whether you request a hearing as discussed in Paragraphs 27 and 28, above.

32. Failure to deny any factual allegation in this Complaint shall constitute admission of the alleged fact.

33. You must send a copy of your Answer and of any documents subsequently filed in this action to Andre Daugavietis, Assistant Regional Counsel at the following address:

Andre Daugavietis
Associate Regional Counsel
Office of Regional Counsel (CA-30A)
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

You may telephone Mr. Daugavietis at (312) 886-6663.

34. If you fail to file a written Answer, with or without a Request for Hearing, within 30 calendar days of its receipt of this Complaint, the Administrator of the USEPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

35. Failure to comply with an administrative penalty order subjects you to the provisions relating to the imposition of interest, penalty and enforcement expenses set forth at Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). Interest will accrue at the rate established pursuant to 26 U.S.C. § 6621(a)(2). The USEPA will also apply a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of your outstanding penalties and nonpayment penalties accrued as of the beginning of

such quarter. In addition, you will be required to pay, in addition to all other penalties and interest, the United States' enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings. In such a collection proceeding, the validity, amount, and appropriateness of the administrative penalty assessed shall not be subject to review.

SETTLEMENT CONFERENCE


36. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request an informal settlement conference, you should write to Jennifer Darrow, Air and Radiation Division (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Ms. Darrow at (312) 886-6315.

37. Your request for an informal settlement conference does not extend the 30 calendar day period during which it must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, the U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order (CAO). Your agreement to a CAO shall constitute a waiver of its right to request a hearing on any matter stipulated to therein.

38. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Act, or any other Federal, State, or local law or regulation.

Date

1/17/77


David Kee, Director
Air and Radiation Division
USEPA, Region 5
77 West Jackson Boulevard (A-18J)
Chicago, Illinois 60604